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STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Information received from United Nations organs, specialized agencies and intergovernmental organizations

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A. United Nations Educational, Scientific and Cultural Organization

[28 May 1993]
[Original: English]

1. Preambular paragraphs: the formulation of the first preambular paragraph might be divided into two paragraphs, the first ending with the words "international standards"; the second would then start with "Recognizing," etc. It is of the utmost importance that the principle stated in the first part of preambular paragraph 1 be clearly set out.
2. Operative paragraphs: part II might begin with operative paragraph 6 and include operative paragraph 19 from part III; in this way, the elements concerning education, culture, intellectual property, etc., would be grouped into one set of operative paragraphs, thus enhancing the unity of the above-mentioned elements.

B. Food and Agriculture Organization of the United Nations

[31 May 1993]
[Original: English]

The draft declaration seems to be very general in nature and does not address details of specific issues of concern to the indigenous populations. Apart from this general comment, we consider that the declaration could be strengthened considerably by including in it the commitment of the 159 countries which participated in the International Conference on Nutrition (ICN, Rome, 5-11 December 1992) to "recognize that access to nutritionally adequate and safe food is a right of each individual" (para. 1, World Declaration on Nutrition) and to the specific calls for protecting and promoting the nutritional well-being of indigenous peoples. The need to monitor and address the condition of indigenous populations is first highlighted under section II of the Plan of Action: "Major Policy Guidelines" (para. 14). Attention is again called to the vulnerable state of some indigenous populations in paragraph 36 of section IV.6: "Caring for the socio-economically deprived and nutritionally vulnerable", and paragraph 36 (i) calls on Governments, in cooperation with other concerned parties, to "enhance the nutritional status of the indigenous people through the development and implementation of culturally acceptable strategies that involve the community."

C. International Labour Organisation

[14 June 1993]
[Original: English]

The following comments are based on the revised version of the draft declaration being submitted to the Working Group at its 1993 session.

I. GENERAL QUESTIONS

A. Compatibility with ILO standards

1. The ILO's principal concern with regard to the draft declaration is the possibility that the declaration, as finally adopted by the General Assembly, will be inconsistent with the ILO's Indigenous and Tribal Peoples Convention, 1989 (No. 169). The Working Group will no doubt agree that the declaration should in no case contain lower standards than the ILO Convention - already conceived as minimum standards - as this would be an undesirable retrogression in international human rights law. This is not a concern in the draft in its present form, which appears to be in general conformity with the ILO standards, but it does apply at the later stages of consideration through which the draft must pass when it has been adopted by the Working Group. It is therefore the ILO's hope that measures will be taken to ensure that this does not occur. - While the ILO intends to take an active part in any such future discussions, some suggestions in this regard are made below.

B. Terminology and definition

2. The first concern in this connection is that the draft declaration - and the title of the Working Group itself - speak of "indigenous" peoples or populations, without the ILO's wider term "indigenous and tribal". The ILO has pointed out repeatedly, orally and in writing, that this is significantly narrower than the ILO standards. It is noted that a number of countries have stated specifically that their own situations are not covered by the term "indigenous", though agreeing that they are covered by the term "indigenous and tribal". There is a risk that the coverage of the draft declaration would be considered to be geographically narrower than the ILO instruments. The adoption of universal and not regional standards should be the Working Group's aim.

3. There are two ways in which this problem might be corrected. The first and most obvious would be to adopt the terminology in the ILO Conventions, thus eliminating future problems of possible incompatibility. This would bring the draft declaration into line with existing international law on the subject and facilitate coordination between ILO and the United Nations in the future. The alternatives, if this term does not meet with agreement, would be to add "and others living in similar situations", or to ensure that the term "indigenous" has a wider coverage than its restrictive literal meaning and that it is understood to be coextensive with the coverage of the ILO Convention.

II. PREAMBLE

4. The draft still contains no reference to ILO Conventions Nos. 107 and 169, which constitute the existing international law on the subject. It should be noted, of course, that the United Nations and the other specialized agencies in the United Nations system took an open part in drafting these standards, and that they already constitute a wide measure of agreement. Omission of this reference increases the likelihood that the draft declaration will not have Convention No. 169 as a point of reference at later stages of

its drafting, and will make it easier to amend it in ways which are inconsistent with the Convention.

5. It is therefore proposed to insert, after the fifteenth preambular paragraph, the following:

"Noting the adoption by the International Labour Organisation, with the collaboration and cooperation of other parts of the United Nations system, of the Indigenous and Tribal Populations Convention, 1957 (No. 107) and the Indigenous and Tribal Peoples Convention, 1989 (No. 169), which have been ratified by a number of States and which constitute minimum standards in this regard,".

6. Eighteenth preambular paragraph. It is not accurate to state that this declaration is a first step in the recognition, etc., of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field. It will be well known to the Working Group that the ILO has been adopting standards relating to indigenous and tribal peoples since well before the establishment of the United Nations itself, and that the only integrated programme of technical assistance for indigenous populations - in which the United Nations and other bodies in the system participated under the general coordination of the ILO - was the Andean Indian Programme which operated from 1952 to 1972.

7. It is therefore necessary to replace the word "first" by "further".

III. OPERATIVE PARAGRAPHS

8. ILO has few remarks on this part of the draft. It is in most cases compatible with Convention No. 169, and in some cases uses the same formulations.

9. Paragraph 11. In the first line, the words "revitalize and practise" should be in the opposite order. The present formulation implies that there are no indigenous cultural traditions which are presently vital.

10. Paragraph 13. Same comment.

11. Paragraph 26. Essentially the same comment as for paragraphs 11 and 13. Protection should come before recreation (a better word for the same concept would perhaps be "restoration").

12. Paragraph 28. Second sentence: "taken to mitigate" should be replaced by "which have".
